

**MEMORANDUM TO HEALTH CARE PROVIDERS
CONDUCTING HIV COUNSELING AND TESTING
IN NEW YORK STATE**

From: The New York State Department of Health (DOH)
The New York State Education Department (SED)

Re: Best Practices in Providing HIV Testing

Date: February 2006

On August 2, 2005, Governor George Pataki signed Chapter 429 of the Laws of 2005, which amends both the Public Health and Education Laws to permit licensed physicians and certified nurse practitioners to issue non-patient specific orders for registered professional nurses who may be involved in directly providing HIV counseling and testing to patients. The law amends the Education Law by adding “tests to determine the presence of human immunodeficiency virus” to the list of tests that may be performed by registered nurses without a patient specific order. The existing list of procedures that can be performed by nurses pursuant to a standing order includes administration of certain immunizations, anaphylactic treatment medications and tuberculin skin tests.

The New York State Department of Health (DOH), consistent with recommendations from the Centers for Disease Control and Prevention (CDC), continues to emphasize the importance of HIV testing for reducing HIV transmission and as a means of assuring that HIV-infected individuals are aware of their status and enter care in a timely manner. The recent availability of rapid testing technology provides an opportunity for expanding HIV testing both in medical care and nontraditional settings. DOH recently published new HIV testing guidelines to encourage HIV testing, remove or reduce barriers to testing, and improve access to health care for infected individuals. Up-to-date information on HIV testing, including streamlined counseling and the simplified informed consent process, is available at <http://www.health.state.ny.us>.

The Department of Health recommends that routine HIV testing be provided in medical care and other service settings under the direction of the authorizing physician or nurse practitioner as required by Public Health Law 27-F. Nurses will play an important role in expanding HIV testing, and non-patient specific orders will facilitate their involvement. In high-volume HIV testing settings, having a dedicated HIV counselor available to answer detailed questions, to address the needs of those who receive positive HIV test

results and to address the prevention needs of high-risk individuals whose HIV test results are negative may be appropriate.

The State Education Department (SED) is currently developing regulations implementing Chapter 429, which will be published in the State Register for public comment. In the interim, DOH and SED are providing the following guidance for settings utilizing non-patient specific orders for nurses to conduct HIV counseling and testing. DOH and SED would like to emphasize that, in any setting; best practices in HIV testing involve a team approach between all members of the care team including the ordering physician or nurse practitioner. Also, while nurses are a valuable addition to the counseling and testing team, counseling and testing programs are not required to utilize nurses in this role.

- **The Pre-Test Session.** The Department of Health's *2005 HIV Counseling and Testing Guidance* highlights the flexibility that providers have to tailor HIV pre-test counseling to best meet the needs of individuals to be tested. In providing routine care, the nurse or other person performing the counseling may give Part A of the *Informed Consent for HIV Testing* (the informational section) to the patient for review along with an explanation that the authorizing physician or nurse practitioner recommends testing for HIV. Individuals who have no questions are asked to sign the signature page (Part B) of the form. Other ways to provide information on testing may include verbal review of the form and/or the use of print and/or audiovisual materials. More extensive counseling should be provided upon patient request or upon assessment that this is required.
- **Post-Test Counseling.** The Department of Health's Guidance for post-test counseling has not changed. Patients who receive negative test results should be provided with their results and encouraged to retain Part A (the informational section) of the *Informed Consent for HIV Testing* form. For individuals with identified risks, other relevant information should be provided, and these individuals should be encouraged to access HIV prevention programs and services appropriate to their risks.

A team approach between the nurse or other person providing counseling and the authorizing physician or nurse practitioner is especially important for patients who receive confirmed HIV positive test results. Under state law, these patients must receive post-test counseling that includes assistance in coping with the consequences of learning the positive test result and proactive assistance in accessing care, prevention and supportive services. In addition, the patient must receive counseling to reduce the risk of HIV transmission to others and information on partner notification options as well as screening for partner violence. Finally, the authorizing physician or nurse practitioner must report new cases of HIV and the names of the patient's known sex or needle-sharing partners to the State Department of Health.

Best practices for post-test counseling vary depending on choice of testing technology.

- **Rapid Testing.** When rapid HIV testing technology is used, the screening test result is available in 10 to 30 minutes (depending on type of test used). No further testing is required when the HIV screening test result is non reactive (negative). A reactive screening result is considered to be a preliminary (unconfirmed) HIV positive and must be confirmed through clinical laboratory testing. In the case of a preliminary positive HIV test result, the nurse or other person providing the counseling and testing must arrange for the confirmatory test (blood or oral fluid specimen) and make an appointment for the patient's return for the confirmatory test result. In addition, he/she would provide the patient with the preliminary test result and assist the patient in developing a plan for coping with the stress of waiting for the confirmatory test result. He/she should also review the patient's risk behaviors and advise him/her to adopt strategies that reduce the risk of transmission to others. Given the accuracy of the currently available HIV tests, especially in high seroprevalence areas and among high-risk populations, it may be appropriate to introduce the patient to other members of the health care team during this visit.
- **Conventional Testing.** When HIV testing involves collecting a specimen that is sent to a clinical laboratory for analysis, the lab report is sent back to the authorizing health care provider. If the HIV screening test (e.g., EIA) is positive, the laboratory confirms the result with a Western Blot and may conduct other tests that will assist the provider in developing a treatment plan. When test results determine HIV infection in the patient, the ordering physician or nurse practitioner must be made aware of the test results before the patient returns for post test counseling and must provide direction to the staff, including registered professional nurses, providing the post test counseling. In particular, arrangements should be in place for a seamless entry into care. This can be accomplished by scheduling the post-test counseling session when the physician is available in person or by phone, by escorting the patient directly to the care setting, or by introducing the patient to other members of the health care team.
- In light of provisions of the Nurse Practice Act, which prohibit nurses from delivering a medical diagnosis to patients, SED's interpretation of Chapter 429 is that the registered nurse should have a patient-specific order from the authorizing physician or nurse practitioner in order to deliver the final, confirmatory HIV positive test result.

Again, we urge you to visit the Department of Health's website <http://www.health.state.ny.us> to learn more about HIV testing. You may also wish to visit the websites for the Office of Professions of the New York State Department of Education <http://www.op.nysed.gov> and <http://www.op.nysed.gov/nurse.htm>.